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DEPARTMENT OF STATE

[Public Notice: 10020]

Issuance of Presidential permit to the Otay Water District to construct, connect, operate, and maintain cross-border water pipeline facilities for the importation of desalinated seawater at the international boundary between the United States and Mexico in San Diego County, California.

SUMMARY: The Department of State issued a Presidential permit to the Otay Water District (the District) on May 16, 2017, authorizing the District to construct, connect, operate, and maintain cross-border water pipeline facilities for the importation of desalinated seawater at the international boundary between the United States and Mexico in San Diego County, California. In making this determination, the Department provided public notice of the proposed permit, offered the opportunity for comment, and consulted with other federal agencies, as required by Executive Order 11423, as amended.

FOR FURTHER INFORMATION CONTACT: Contact the Office of Mexican Affairs' Border Affairs Unit via email at WHABorderAffairs@state.gov, by phone at 202–647–9894, or by mail at Office of Mexican Affairs—Room 3924, Department of State, 2201 C St. NW., Washington, DC, 20520. Information about Presidential permits is available on the Internet at <http://www.state.gov/p/wha/rt/permit/>.

SUPPLEMENTARY INFORMATION: The following is the text of the issued permit:

PRESIDENTIAL PERMIT

AUTHORIZING THE OTAY WATER DISTRICT TO CONSTRUCT, CONNECT,
OPERATE, AND MAINTAIN CROSS-BORDER WATER PIPELINE FACILITIES
FOR THE IMPORTATION OF DESALINATED SEAWATER AT THE
INTERNATIONAL BOUNDARY BETWEEN THE UNITED STATES AND MEXICO
IN SAN DIEGO COUNTY, CALIFORNIA

By virtue of the authority vested in me as the Acting Assistant Secretary of State for the Bureau of Oceans and International Environmental and Scientific Affairs including those authorities under Executive Order 11423, 33 Fed. Reg. 11741 (1968); as amended by Executive Order 12847 of May 17, 1993, 58 Fed. Reg. 29511 (1993), and Executive Order 13337 of April 30, 2004, 69 Fed. Reg. 25299 (2004); and Department of State Delegation of Authority 118-2 of January 26, 2006 and Delegation 415 of January 18, 2017; having considered the environmental effects of the proposed action consistent with the National Environmental Policy Act of 1969, as amended (83 Stat. 852, 42 U.S.C. 4321 et seq.), and other statutes relating to environmental concerns; having considered the proposed action consistent with the National Historic Preservation Act of 1966, as amended (80 Stat. 917, 16 U.S.C. 470f et seq.); and having requested and received the views of various federal departments, state and local officials, and Indian tribes, and other interested persons; I hereby grant permission, subject to the conditions herein set forth, to the Otay Water District (hereinafter referred to as “permittee”) to construct, connect, operate, and maintain cross-border water pipeline facilities for the importation of desalinated seawater at the international boundary between the United States and Mexico in San Diego County, California.

The term “facilities” as used in this permit means the relevant portion of the pipeline and any land, structures, installations, or equipment appurtenant thereto as described in the permittee’s November 2013 application for a Presidential permit (the “Application”).

The term “U.S. facilities” as used in this permit means those parts of the facilities in the United States, as described in the Application.

This permit is subject to the following conditions:

Article 1. (1) The U.S. facilities herein described, and all aspects of their operation, shall be subject to all the conditions, provisions, and requirements of this permit and any amendment thereof. This permit may be terminated at the will of the Secretary of State or the Secretary’s delegate or may be amended by the Secretary of State or the Secretary’s delegate at will or upon proper application therefore. The permittee shall make no substantial change in the location of the U.S. facilities or in the operation authorized by this permit until such changes have been approved by the Secretary of State or the Secretary’s delegate.

(2) The construction, connection, operation, and maintenance of the facilities shall be in all material respects as described in the Application.

Article 2. The standards for, and the manner of, the construction, connection, operation, and maintenance of the U.S. facilities shall be subject to inspection and approval by the representatives of appropriate federal, state, and local agencies. The permittee shall allow duly authorized officers and employees of such agencies free and unrestricted access to said facilities in the performance of their official duties.

Article 3. The permittee shall comply with all applicable federal, state, and local laws and regulations regarding the connection, construction, operation, and maintenance of the U.S. facilities and with all applicable industrial codes. The permittee shall obtain all requisite permits from the relevant Mexican authorities as well as from the relevant state and local government entities and relevant federal agencies.

Article 4. All construction, connection, operation, and maintenance of the U.S. facilities under this permit shall be subject to the limitations, terms, and conditions issued by any competent agency of the U.S. Government, including but not limited to the Department of Homeland Security (DHS) and the U.S. Section of the International Boundary and Water Commission (USIBWC). The permittee shall continue the operations hereby authorized and conduct maintenance in accordance with such limitations, terms, and conditions. Such limitations, terms, and conditions could address, for example, environmental protection and mitigation measures, safety requirements, export or import and customs regulations, measurement capabilities and procedures, requirements pertaining to the pipeline's capacity, and other pipeline regulations. This permit shall continue in force and effect only so long as the permittee shall continue the operations hereby authorized by any competent U.S. government agency in exact accordance with such limitations, terms, and conditions.

Article 5. Upon the termination, revocation, or surrender of this permit, and unless otherwise agreed by the Secretary of State or the Secretary's delegate, the U.S. facilities in the immediate vicinity of the international boundary shall be removed by and at the expense of the permittee within such time as the Secretary of State or the Secretary's delegate may specify, and upon failure of the permittee to remove, or to take

such other action with respect to, this portion of the U.S. facilities as ordered, the Secretary of State or the Secretary's delegate may direct that possession of such facilities be taken and that they be removed or other action taken, at the expense of the permittee; and the permittee shall have no claim for damages by reason of such possession, removal, or action.

Article 6. When, in the opinion of the President of the United States, the national security of the United States demands it, due notice being given by the Secretary of State or the Secretary's delegate, the United States shall have the right to enter upon and take possession of any of the U.S. facilities or parts thereof; to retain possession, management, or control thereof for such length of time as may appear to the President to be necessary; and thereafter to restore possession and control to the permittee. In the event that the United States shall exercise such right, it shall pay to the permittee just and fair compensation for the use of such U.S. facilities upon the basis of a reasonable profit in normal conditions and the cost of restoring said facilities to as good condition as existed at the time of entering and taking over the same, less the reasonable value of any improvements that may have been made by the United States.

Article 7. Any transfer of ownership or control of the U.S. facilities or any part thereof shall be immediately notified in writing to the U.S. Department of State for approval, including identification of the transferee. In the event of such transfer of ownership or control, this permit shall remain in force and the U.S. facilities shall be subject to all the conditions, permissions, and requirements of this permit and any amendments thereof.

Article 8. (1) The permittee is responsible for acquiring such right-of-way grants or easements, permits, and other authorizations as may become necessary and appropriate.

(2) The permittee shall save harmless and indemnify the United States from any claimed or adjudged liability arising out of construction, connection, operation, or maintenance of the facilities.

(3) The permittee shall maintain the U.S. facilities and every part thereof in a condition of good repair for their safe operation.

(4) The permittee shall obtain a license from the USIBWC before commencing construction.

(5) The permittee shall obtain an easement from DHS for any portion of the pipeline that crosses over or under property in which the U.S. Customs and Border Protection owns an interest.

(6) The permittee shall obtain a permit from the California Environmental Protection Agency, State Water Resources Control Board, Division of Drinking Water.

Article 9. The permittee shall take all appropriate measures to prevent or mitigate adverse environmental impacts or disruption of significant archeological resources in connection with the operation and maintenance of the U.S. facilities, including those mitigation measures set forth in the Final Environmental Impact Report/Environmental Impact Statement dated August 2016 and any additional measures that may be required

as result of any reevaluation of the foregoing or in the associated terms of the Biological Opinion to be issued by the U.S. Fish and Wildlife Service.

Article 10. The permittee shall not begin construction until it has been informed that the Government of the United States and the Government of Mexico have exchanged diplomatic notes confirming that both governments authorized the commencement of construction.

Article 11. The permittee shall provide written notice to the Department of State at such time as the construction authorized by this permit is begun and again at such time as construction is completed, interrupted, or discontinued.

Article 12. The permittee shall file with the appropriate agencies of the U.S. government such statements or reports under oath with respect to the U.S. facilities, and/or the permittee's actions in connection therewith, as are now or may hereafter be required under any laws or regulations of the U.S. government or its agencies.

Article 13. This permit shall expire five years from the date of issuance in the event that the permittee has not commenced construction of the facilities by that deadline.

IN WITNESS WHEREOF, I, Judith G. Garber, Acting Assistant Secretary of State for the Bureau of Oceans and International Environmental and Scientific Affairs, have hereunto set my hand this __16th__ day of __May__, 2017 in the City of Washington, District of Columbia.

Judith G. Garber,

*Acting Assistant Secretary for
Oceans and International Environmental
And Scientific Affairs.*

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